as relates to the rights and duties of a court and jury upon an indictment for crime? Is it not rather more in the nature of an inquest office? The constitution seems to have determined it to be the latter, because, under its provisions, the right to retain and hold office is the only subject that can be finally adjudicated—all preliminary inquiry being carried on solely to determine that question and that alone. All investigations of fact are in some sense trials, but not in the sense in which the word is used by courts. Again, as a correlative question, is this body, now sitting to determine the accusation of the House of Representatives against the President of the United States, the Senate of the United States or a court? I trust, Mr. President and Senators, I may be pardoned for making some suggestions upon these topics, because, to us, it seems these are questions not of forms but of substance. If this body here is a court in any manner as contradistinguished from the Senate, then we agree that many if not all the analogies of the procedures of courts must obtain; that the common law incidents of a trial in court must have place; that you may be bound in your proceedings and adjudication by the rules and precedents of the common statute law; that the interest, bias or preconceived opinions or affinities to the party of the judges may be open to inquiry, and even the rules of order and precedents in courts should have effect; that the Managers of the House of Representatives must conform to those rules, as they would be applicable to public or private prosecutors of crime in courts, and that the accused may claim the benefit of the rule in criminal cases that he may only be convicted when the evidence makes the fact clear beyond reasonable doubt, instead of by a preponderance of the evidence. We claim, and respectfully insist, that this tribunal has none of the attributes of a judicial court as they are commonly received and understood. Of course this question must be largely determined by the express provisions of the constitution, and in it there is no word, as is well known to you, Senators, which gives the slightest coloring to the idea that this is a court, save that in the trial of this particular respondent the Chief Justice of the Supreme Court must preside. But even this provision can have no determining effect upon the question, because is not this the same tribunal in all its powers, incidents and duties when other civil officers are brought to its bar for trial, when the Vice-President (not a judicial officer) must preside? Can it be contended for a moment that this is the Senate of the United States when sitting on the trial of all other officers and a court only when the President is at the bar, solely because in this case the constitution has designated the Chief Justice as the presiding officer? The fact that Senators are sitting for this purpose on oath or affirmation does not influence the argument, because it is well understood that that was but a substitute for the obligation of honor under which, by the theory of the British constitution, the peers of England were supposed to sit in like cases. A peer of England makes answer in a Court of Chancery upon honor, when a common person must answer on oath. But our fathers, sweeping away all distinctions of caste, required every man alike, acting in a solemn proceeding like this, to take an oath. Our constitution holds all good men alike honorable and entitled to honor. The idea that this tribunal was a court seems to have crept in because of the analogy of similar proceedings in trials before the House of Lords. Analogies have ever been found deceptive and illusory. Before such analogy is invoked we must not forget that the Houses of Parliament at first, and latterly the House of Lords, claimed and exercised jurisdiction over all crimes, even when the punishment extended to life and limb. By express provision of our constitution all such jurisdiction is taken from the Senate and "the judicial power of the United States is vested in one Supreme Court and such inferior courts as from time to time Congress may ordain and establish." We suggest, therefore, that we are in the presence of the Senate of the United States convened as a constitutional tribunal to inquire into and determine whether Andrew Johnson, because of malversation in office, is longer fit to retain the office of President of the United States, or hereafter to hold any office of honor or profit. I respectfully submit that thus far your mode of proceeding has no analogy to that of a court. You issue a summons to give the respondent notice of the case pending against him; you do not sequester his person; you do not require his personal appearance even; you proceed against him and will go on to determine his cause in his absence, and make the final order therein. How different is each step from those of ordinary criminal procedure! A constitutional tribunal solely, you are bound by no law, either statute or common, which may limit your constitutional prerogative. You consult no precedents save those of the law and custom of parliamentary bodies. You are a law unto yourselves, bound only by the natural principles of equity and justice, and that *salus populi suprema est lex*. Upon these principles and parliamentary law no judges can aid you, and indeed in late years the judges of England in the trial of impeachment declined to speak to a question of parliamentary law, even at the request of the House of Peers, although they attended on them in their robes of office. Nearly five hundred years ago, in 1388, the House of Lords resolved, in the case of Belknap and the other judges, "that these matters, when brought before them, shall be discussed and adjudged by the course of Parliament, and not by the civil law, nor by the common law of the land used in other inferior courts." And that resolution, which was in contravention of the opinion of all the judges in England and against the remonstrance of Richard II., remains the unquestioned law of England to this day. Another determining quality of this tribunal, distinguishing it from a court and the analogies of ordinary legal proceedings, and showing that it is a Senate only, is that there can be no right of challenge by either party to any of its members for favor or malice, affinity or interest. This has been held from the earliest times in Parliament, even when that was the high court of judicature of the realm, sitting to punish all crimes against the peace. In the case of the Duke of Somerset (1 Howell's State Trials, p. 521), as early as 1551, it was held that the Duke of Northumberland and the Marquis of Northampton and the Earl of Pembroke, for an attempt upon whose lives Somerset was on trial, should sit in judgment upon him against the objection of the accused, because "a peer of the realm might not be challenged." Again, the Duke of Northumberland (ibid, 1st State Trials, p. 765), Marquis of Northumberland and Earl of Warwick, on trial for their lives, A. D. 1553, before the Court of Peers, the Lord High Steward of England, being one of the prisoners, inquired whether any such persons as were equally culpable in that crime, and those by whose letters and commandments he was directed in all his doings, might be his judges, or pass upon his trial at his death? It was answered that, "if any were as deeply to be touched as himself in that case, yet as long as no attainder of record were against them, they were nevertheless persons able in the law to pass upon any trial, and not to be challenged therefor, but at the Prince's pleasure." Again, on the trial of the Earls of Essex and Southampton (ibid, 1 State Trials, p. 1,335) for high treason, before all the justices of England, A. D. 1600, the Earl of Essex desired to know of my Lord Chief Justice whether he might challenge any of the peers or no? Whereunto the Lord Chief Justice answered "No." Again, in Lord Audley's case (ibid, 3 State Trials, page 402, A. D. 1631) it was questioned whether a peer might challenge his peers, as in the case of common jurats. It was answered by all the judges, after consultation, "he might not." [This case is of more value because it was an indictment for being accessory to rape upon his own wife, and had no political influence in it whatever.] The same point was ruled in the Countess of Essex's case on trial for treason. (Moore's reports, 621.) In the Earl of Portland's case, A. D. 1701 (ibid, State trials, page 288), the Commons objected that Lord Summers, the Earl of Oxford and Lord Halifax, who had been impeached by the Commons before the House of Lords for being concerned in the same acts for which Portland was being brought to trial, voted and acted with the House of Lords in the preliminary proceedings of said trial, and were upon a committee of conference in relation thereto. But the lords after discussion solemnly resolved "that no lord of Parliament, impeached of high crimes and misdemeanors, can be precluded from voting on any occasion except on his own trial." In the trial of Lord Viscount Melville, A. D. 1806 (ibid 29, State Trials, page 1,398), some observations having been made as to the possible bias of some portion of the peers (by the counsel for defendant), Mr. Whitebread, one of the managers on the part of the Commons, answered as follows:—

My lords, as to your own court, something has been thrown out about the possibility of a challenge. Upon such a subject it will not be necessary to say more than this, which has been admitted—that an order was given by the House of Commons to prosecute Lord Melville in a court of law where he would have the right to challenge his jurors. * * * What did the noble Viscount then do by the means of one of his friends? * * * From the mouth of that learned gentleman came at last the successful maxim, "that Henry, Viscount of Melville, be impeached of high crimes and misdemeanors." I am justified, then, in saying that he is here by his own option. * * * But, my lords, a challenge to your lordships! Is not every individual peer the guardian of his own honor?

In the trial of Warren Hastings the same point was ruled, or, more properly speaking, taken for granted, for of the more than 170 peers who commenced the trial but 29 sat and pronounced the verdict at the close, and some of those were peers created since the trial began, and had not either heard the opening or much of the evidence, and during the trial there had been by death, succession and creation more than 180 changes in the House of Peers, who were his judges. We have abundant authority also on this point in our own country. In the case of Judge Pickering, who was tried March, 1804, for drunkenness in office, although undefended in form, yet he had all his rights preserved, this trial being postponed a session; three Senators—Samuel Smith, of Maryland; Israel Smith, of Vermont, and John Smith, of New York—who had all been members of the House of Representatives and there voted in favor of impeaching Judge Pickering, were Senators when his trial came off. Mr. Smith, of New York, raised the question asking to be excused from voting. Mr. Smith, of Maryland, declared "he would not be influenced from his duty by any false delicacy; that he, for his part, felt no delicacy upon the subject; the vote he had given in the other house to impeach Judge Pickering would have no influence upon him in the court; his constituents had a right to his vote, and he would not by any act of his deprive or consent to deprive them of that right, but would claim and exercise it upon this as upon every other question that might be submitted to the Senate while he had the honor of a seat." A vote being had upon the question, it was determined that these gentlemen should sit and vote on the trial. This passed in the affirmative by a vote of nineteen to seven, and all the gentlemen sat and voted on every question during the trial. On the trial of Samuel Chase before the Senate of the United States no challenge was attempted, although the case was decided by an almost strict party vote in high party times, and doubtless many of the Senators had formed and expressed opinions upon his conduct. That arbitrary judge but learned lawyer knew too much to attempt any such futile movement as a challenge to a Senator. Certain it is that the proprieties of the occasion were not marred by the worse than anomalous proceeding of the challenge of one Senator to another, especially before the defendant had appeared. Nor did the Managers exercise the right of challenge, although Senators Smith and Mitchell, of N. Y., were members of the the Senate on the trial, and voted not guilty on every article, who had been members of the House when the articles were found and had there voted steadily against the whole proceeding. Judge Peck's case, which was tried in 1831, affords another instance in point. The conduct of Judge Peck had been the subject of much animadversion and comment by the public, and had been for four years pending before the Congress of the United States before it finally came to trial. It was not possible but that many of the Senate had both formed and expressed opinions upon Peck's proceedings, and yet it never occurred to that good lawyer to make objection to his triers. Nor did the Managers challenge, although Webster, of Massachusetts, was a member of the committee of the House of Representatives to whom the petition for impeachment was referred, and which, after examination, reported thereon "leave to withdraw," and Sprague, of Maine, voted against the proceedings in the House, while Livingston, of Louisiana, voted for them. All of these gentlemen sat upon the trial, and voted as they did in the House. A very remarkable and instructive case was that of Judge Addison, of Pennsylvania, in 1804. There, after the articles of impeachment were framed, the trial was postponed to another session of the Legislature. Meanwhile three members of the House of Representatives who had voted for the articles of impeachment were elected to the Senate and became the triers of the articles of impeachment of which they had solemnly voted the respondent to be guilty. To their sitting on the trial Judge Addison objected, but after an exhaustive argument his objection was overruled, seventeen to six. Two of the minority were the gentlemen who had voted him guilty, and who themselves objected to sitting on the trial.

Thus stands the case upon authority. How does it stand upon principle? In a conference, held in 1691, between the lords and commons on a proposition to limit the number of judges, the lords made answer:—"That in the case of impeachment, which are the groans of the people, and for the highest crimes, and carry with them a greater supposition of guilt than any other accusation, there all the lords must judge." There have been many instances in England where this necessity that no peer be excused from sitting on such trials has produced curious results. Brothers have sat upon the trials of brothers, fathers upon the trials of sons and daughters, uncles upon the trials of nephews and nieces; no excuse being admitted. One, and a most peculiar and painful instance, will suffice upon this point to illustrate the strength of the rule. In the trial of Anne Boleyn, the wife of one sovereign of England and the mother of another, her father, Lord Rochefort, and her uncle, the Duke of Norfolk, sat as judges and voted guilty, although one of the charges against the daughter and niece was a criminal intimacy with her brother, the son and nephew of the judges. It would seem impossible that in a proceeding before such a tribunal so constituted there could be a challenge, because as the number of triers is limited by law, and as there are not now and never have been any provisions, either in England or in this country, for substituting another for the challenged party as a talisman is substituted in a jury, the accused might escape punishment altogether by challenging a sufficient number to prevent a quorum, or the accusers might oppress the respondent by challenging all persons favorable to him until the necessary unanimity for conviction was secured. This proceeding being but an inquest of office and, except in a few rare instances, almost partaking, more or less, of political considerations, and required to be discussed, before presentation to the triers, by the co-ordinate branch of the Legislature, it is impossible that Senators should not have opinions and convictions upon the subject matter more or less decidedly formed before the case reaches them. If, therefore, challenges could be allowed because of such opinions, as in the case of jurors, no trial could go forward, because every intelligent Senator could be objected to on one side or the other. I should have hardly dared to trouble the Senate with such minuteness of citation and argument upon this point were it not that certain persons and papers outside of this body, by sophistries drawn from the analogies of the proceedings in courts before juries, have endeavored, in advance, to prejudice the public mind, but little instructed in this topic, because of the unfrequency of impeachments, against the legal validity and propriety of the proceedings upon this trial. I may be permitted, without offence, further to state that these and similar reasons have prevented the Managers from objecting by challenge or otherwise to the competency of one of the triers of near affinity to the accused. We believe it is his right—nay, his duty to the State he represents—to sit upon the trial as he would upon any other matter which should come before the Senate. His seat and vote belong to his constituents and not to himself, to be used according to his best judgment upon every grave matter that comes before the Senate. Again, as political considerations are involved in this trial raising questions of interest to the constituents of every Senator, it is his right and duty to express himself as fully and freely upon such question as upon any other; even to express a belief in the guilt or innocence of the accused, or to say he will sustain him in the course he is taking, although he so says after accusation brought. Let me illustrate. Suppose that after this impeachment had been voted by the House of Representatives the constituents of any Senator had called a public meeting to sustain the President against what they were pleased to term the "tyrannical acts of Congress towards him in impeaching him," and should call upon their Senator to attend and take part in such meeting, I do not conceive that it would or ought to be legally objected against him as a disqualification to sit upon this trial upon the principles I have stated, if he should attend the meeting or favor the object, or, if his engagements in the Senate prevented him leaving, I have not been able to find any legal objection in the books to his writing a letter to such meeting, containing, among other things, statements like the following:—

SENATE CHAMBER, February 24, 1868.

GENTLEMEN—My public and professional engagements will be such on the 4th of March that I am reluctantly compelled to decline your invitation to be present and address the meeting to be held in your city on that day. * * * That the President of the United States has sincerely endeavored to preserve these (our free institutions) from violation I have no doubt, and I have, therefore, throughout the unfortunate differences of opinion between him and Congress sustained him. And this I shall continue to do so long as he shall prove faithful to duty. With my best thanks for the honor you have done me by your invitation, and regretting that it is not in my power to accept it, I remain, with regard, your obedient servant,
REVERDY JOHNSON.

We should have as much right to expect his vote on a clearly proven case of guilty as had King Henry VIII. to hope for the vote of her father against his wife; he got it. King Henry knew the strength of his case, and we know the strength of ours against this respondent. If it be said that this is an infelicity, it is a sufficient and decisive answer that it is the infelicity of a precise constitutional provision, which provides that the Senate shall have the sole power to try impeachments, and the only security against bias or prejudice on the part of any Senator is that two-thirds of the Senators present are necessary for conviction. To this rule there is but one possible exception, founded on both reason and authority, that a Senator may not be a judge in his own case. I have thought it necessary to determine the nature and attributes of the tribunal before we attend to the scope and meaning of the accusation before it. The first eight articles set out in several distinct forms the acts of the respondent in removing Mr. Stanton from office and appointing Mr. Thomas *ad interim*, differ in legal effect in the purposes for which and the intent with which either or both of the acts were done, and the legal duties and rights infringed and the acts of Congress violated in so doing. All the articles allege these acts to be in contravention of his oath of office and in disregard of the duties thereof. If they are so, however, the President might have the power to do them under the law; still, being so done, they are acts of official misconduct, and, as we have seen, impeachable. The President has the legal power to do many acts, which, if done in disregard of his duty, or for improper purposes, then the exercise of that power is an official misdemeanor. *Ex. gr.*:—He has the power of pardon. If exercised in a given case for a corrupt motive—as for the payment of money, or wantonly pardoning all criminals—it would be a misdemeanor. Examples might be multiplied indefinitely. Article first, stripped of legal verbiage, alleges that having suspended Mr. Stanton and reported the same to the Senate, which refused to concur in the suspension, and Stanton having rightfully resumed the duties of his office, the respondent, with knowledge of the facts, issued an order, which is recited, for Stanton's removal, with intent to violate the act of March 2, 1867, to regulate the tenure of certain civil offices, and with the further intent to remove Stanton from the office of Secretary of War, then in the lawful discharge of its duties, in contravention of said act without the advice and consent of the Senate and against the constitution of the United States. Article second charges that the President, without authority of law, on the 21st of February, 1868, issued a letter of authority to Lorenzo Thomas to act as Secretary of War *ad interim*, the Senate being in session, in violation of the Tenure of Office act and with intent to violate it and the constitution, there being no vacancy in the office of Secretary of War. Article three alleges the same act as done without authority of law, and alleges intent to violate the constitution. Article four charges that the President conspired with Lorenzo Thomas and divers other persons with intent by intimidation and threats to prevent Mr. Stanton from holding the office of Secretary of War, in violation of the constitution and of the act of July 31, 1861. Article five charges the same conspiracy with Thomas to prevent Mr. Stanton's holding, and thereby to prevent the execution of the civil tenure act. Article six charges that the President conspired with Thomas to seize and possess the property under the control of the War department by force, in contravention of the act of July 31, 1861, and with intent to disregard the civil tenure act. Article seven charges the same conspiracy, with intent only to violate the Civil Tenure of Office act. Articles 3, 4, 5, 6 and 7 may be all considered together as to the proof to support them. It will be shown that, having removed Stanton and appointed Thomas, the President sent Thomas to the War Office to obtain possession; that, having been met by Stanton with a denial of his rights, Thomas retired, and, after consultation with the President, Thomas asserted his purpose to take possession of the War Office by force, making his boast in several public places of his intention so to do, but was prevented by being promptly arrested by process from the court. This will be shown by the evidence of Hon. Mr. Van Horn, a member of the House, who was present when the demand for possession of the War Office was made by General Thomas, already made public. By the testimony of Hon. Mr. Burleigh, who after that, in the evening of the 21st of February, was told by Thomas that he intended to take possession of the War Office by force the following morning, and invited him up to see the performance. Mr. Burleigh attended, but the act did not come off, for Thomas had been arrested and held to bail. By Thomas boasting at Willard's Hotel on the same evening that he should call on General Grant for military force to put him in possession of the office, and he did not see how Grant could refuse it. Article eight charges that the appointment of Thomas was made for the purpose of getting control of the disbursement of the moneys appropriated for the military service and Department of War. In addition to the proof already adduced it will be shown that, after the appointment of Thomas, which must have been known to the members of his Cabinet, the President caused a formal notice to be served on the Secretary of the Treasury to the end that the Secretary might answer the requisitions for money of Thomas, and this was only prevented by the firmness with which Stanton retained possession of the books and papers of the War Office. It will be seen that every fact charged in article one is admitted by the answer of the respondent. The intent is also admitted as charged—that is to say, to set aside the Civil Tenure of Office act and to remove Mr. Stanton from the office of the Secretary for the Department of War without the advice and consent of the Senate, and, if not justified, contrary to the provisions of the constitution itself. The only question remaining is, does the respondent justify himself by the constitution and laws? On this he avers that by the constitution there is "conferred on the President, as a part of the executive power, the power at any and all times of removing from office all executive officers for cause, to be judged of by the President alone, and that he verily believes that the executive power of removal from office, confided to him by the constitution as aforesaid, includes the power of suspension from office indefinitely." Now, these offices, so vacated, must be filled, temporarily at least, by his appointment, because government must go on; there can be no interregnum in the execution of the laws in an organized government. He claims, therefore, of necessity, the right to fill their places with appointments of his choice, and that this power cannot be restrained or limited in any degree by any law of Congress, because he avers "that the power was conferred and the duty of exercising it in fit cases was imposed on the President by the constitution of the United States, and that the President could not be deprived of this power or relieved of this duty, nor could the same be vested by law in the President and the Senate jointly, either in part or whole." This, then, is the plain and inevitable issue before the Senate and the American people:—Has the President, under the constitution, the more than kingly prerogative at will to remove from office, and suspend from office indefinitely, all executive officers of the United States, either civil, military or naval, at any and all times, and fill the vacancies with creatures of his own appointment, for his own purposes, without any restraint whatever or possibility of restraint by the Senate or by Congress through laws duly enacted? The House of Representatives, in behalf of the people, join this issue by affirming that the exercise of such powers is a high misdemeanor in office. If the affirmative is maintained by the respondent, then, so far as the first eight articles are concerned—unless such corrupt purposes are shown as will of themselves make the exercise of a legal power a crime—the respondent must go, and ought to go, quit and free. Therefore, by these articles and the answers thereto, the momentous question, here and now, is raised whether the Presidential office itself (if it has the prerogatives and power claimed for it) ought, in fact, to exist as a part of the constitutional government of a free people, while by the last three articles the simpler and less important inquiry is to be determined, whether Andrew Johnson has so conducted himself that he ought longer to hold any constitutional office whatever. The latter sinks to merited insignificance compared with the grandeur of the former. If that is sustained, then a right and power hitherto unclaimed and unknown to the people of the country is engrafted on the constitution, most alarming in its extent, most corrupting in its influence, most dangerous in its tendencies and most tyrannical in its exercise. Whoever, therefore, votes "not guilty" on these articles votes to enchain our free institutions, and to prostrate them at the feet of any man, who, being President, may choose to control them. For this most stupendous and unlimited prerogative the respondent cites no line and addresses no word of constitutional enactment—indeed, he could not, for the only mention of removal from office in the constitution is as a part of the judgment in case of impeachment, and the only power of appointment is by nomination to the Senate of officers to be appointed by their advice and consent, save a qualified and limited appointment by the President when the Senate is not in session. Whence, then, does the respondent by his answer claim to have derived this power? I give him the benefit of his own words, "that it was practically settled by the first Congress of the United States." Again, I give him the benefit of his own phrases as set forth in his message to the Senate on the 2d of March, 1867, made a part of his answer:—"This was decided by the House of Representatives by a vote of thirty-four to twenty, (in this, however, he is mistaken), and in the Senate by the casting vote of the Vice-President." In the same answer he admits that, before he undertook the exercise of the most dangerous and stupendous power, after seventy-five years of study and examination of the constitution by the people living under it, another Congress decided that there was no such unlimited power. So that he admits that his tremendous power which he claims from the legislative construction of one Congress by a vote of 34 to 20 in the House and a tie vote in the Senate, has been denied by another House of more than three times the number of members, by a vote of 133 to 37, and by a Senate of more than double the number of Senators by a vote of 38 to 10, and this, too, after he had presented to them all the arguments in its favor that he could find to sustain his claim of power. If he derives this power from the practical settlement of one Congress of a legislative construction of the constitutional provisions, why may not such construction be as practically settled more authoratively by the unanimity of another Congress, yea, as we shall see, of many other Congresses? The great question, however, still returns upon us, Whence comes this power? how derived or conferred? Is it unlimited and unrestrained—illimitable and unrestrainable—as the President claims it to be? In presenting this topic it will be my duty—and I shall attempt to do nothing more—to state the propositions of law and the authorities to support them, so far as they may come to my knowledge, leaving the argument and illustrations of the question to be extended in the close by abler and better hands. If a power of removal in the Executive is found at all in the constitution it is admitted to be an implied one, either from the power of appointment or because "the executive power is vested in the President?" Has the executive power granted by the constitution by these words any limitations? Does the constitution invest the President with all executive power, prerogatives, privileges and immunities enjoyed by executive officers of other countries—kings and emperors—without limitation? If so, then the constitution has been much more liberal in granting powers to the executive than to the legislative branch of the government, as that has only "all legislative powers herein granted (which) shall be vested in the Congress of the United States;" not all uncontrollable legislative powers, as there are many limitations upon that power as exercised by the Parliament of England for example. So there are many executive powers expressly limited in the constitution, such as declaring war, making rules and regulations for the government of the army and navy, and coining money. As some executive powers are limited by the constitution itself, it is not clear that the words "the executive power is vested in the President," do not confer on him all executive powers, but must be construed with reference to other constitutional provisions granting or regulating specific powers? The executive power of appointment is clearly limited by the words "he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors * * * and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law." Is it not more in accordance with the theory of the constitution to imply the power of removal from the power of appointment, restrained by like limitations, than to imply it solely as a prerogative of executive power and therefore illimitable and uncontrollable? Have the people anywhere else in the constitution granted illimitable and uncontrollable powers either to the executive or any other branch of the government? Is not the whole frame of government one of checks, balances and limitation? Is it to be believed that our fathers, just escaping from the oppressions of monarchical power and so dreading it that they feared the very name of king, gave this more than kingly power to the Executive, illimitable and uncontrollable, and that, too, by implication merely? Upon this point our proposition is that the Senate, being in session, and an office, not an inferior one, within the terms of the constitution being filled, the President has the implied power of inaugurating the removal only by nomination of a successor to the Senate which, when consented to, works the full removal and supersedes the incumbent. Such has been, it is believed, the practice of the government from the beginning down to the act about which we are inquiring. Certain it is that Mr. Webster, in the Senate, in 1835, so asserted without contradiction, using the following language:—

If one man be Secretary of State and another be appointed, the first goes out by the mere force of the appointment of the other, without any previous act of removal whatever; and this is the practice of the government, and has been from the first. In all the removals which have been made they have generally been effected simply by making other appointments. I cannot find a case to the contrary. There is no such thing as any distinct official act of removal. I have looked into the practice and caused inquiries to be made in the departments, and I do not learn that any such proceeding is known as an entry or record of the removal of an officer from office, and the President would only act in such cases by causing some proper record or entry to be made, as a proof of the fact of removal. I am aware that there have been some cases in which notice has been sent to persons in office that their services are or will be, after a given day, dispensed with. These are usually cases in which the object is, not to inform the incumbent that he is removed, but to tell him that a successor either is, or by a day named will be, appointed. If there be any instances in which such notice is given, without express reference to the appointment of a successor, they are few; and even in these such reference must be implied, because in no case is there any distinct official act of removal, as I can find, unconnected with the act of appointment.

This would seem to reconcile all the provisions of the constitution, the right of removal being in the President, to be executed *sub modo*, as is the power of appointment; the appointment, when consummated, making the removal. This power was elaborately debated in the First Congress upon the bills establishing a Department of Foreign Affairs and the War Department. The debate arose on the motion, in Committee of the Whole, to strike out, after the title of the officer, the words "to be removable from office by the President of the United States." It was four days discussed in Committee of the Whole in the House and the clause retained by a vote of 20 yeas to 34 nays, which seemed to establish the power of removal as either by a legislative grant or construction of the constitution. But the triumph of its friends was short-lived; for when the bill came up in the House Mr. Benson moved to amend it by altering the second section of the bill so as to imply power only, the power of removal to be in the President, by inserting that "whenever the principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, the Chief Justice shall, during such vacancy, have charge and custody of all records, books and papers appertaining to the department. Mr. Benson 'declared he would move to strike out the words in the first clause, 'to be removable by the President,' which appeared somewhat like a grant. Now, the mode he took would evade that point and establish a legislative construction of the constitution. He also hoped that his amendment would succeed in reconciling both houses to the decision, and quieting the minds of the gentlemen." After debate the amendment was carried—30 to 18. Mr. Benson then moved to strike out the words "to be removable by the President of the United States," which was carried—31 to 19—and so the bill was engrossed and sent to the Senate. The debates of that body being in secret session we have no record of the discussion which arose on the motion of Mr. Benson establishing the implied power of removal; but after very elaborate consideration, on several successive days, the words implying this power in the President were retained by the casting vote of the elder Adams, the Vice President. So, this claimed legislative settlement was only established by the vote of the second Executive officer of the government. Alas! most of our woes in this government have come from Vice Presidents. When the bill establishing the War Department came up the same words, "to be removable by the President," were struck out on the motion of one of the opponents of the recognition of this power by a vote of 24 to 22, a like amendment to that of the second section of the act establishing the Department of State being inserted. When, six years afterwards, the Department of the Navy was established no such recognition of the power of the President to remove was inserted, and as the measure passed by a strict party vote, 47 yeas to 41 nays, it may well be conceived that its advocates did not care to load it with this constitutional question when the executive power was about passing into other hands; for one cannot read the debates upon this question without being impressed with the belief that reverence for the character of Washington largely determined the argument in the first Congress. Neither party did nor could have looked forward to such an executive administration as we have this day. It has generally been conceded in subsequent discussion that here was a legislative determination of this question, and I humbly submit that, taking the whole action of Congress together, it is very far from being determined. I should hardly have dared, in view of the eminent names of Holmes, Clay, Webster and Calhoun that have hitherto made the admission, to have ventured the assertion were it not that in every case they, as does the President and his counsel, rely on the first vote in the Committee of the Whole sustaining the words "to be removable by the President," and in no instance take any notice of the subsequent proceedings in the House by which those words were taken out of the bill. This may have happened because "Eliot's Debates," which is the authority most frequently cited in these discussions, stops with the vote in committee and takes no notice of the further discussion. But whatever may be the effect of this legislative construction, the contemporaneous and subsequent practice of the government shows that the President made no removals except by nominations to the Senate when in session and superseding officers by a new commission to the confirmed nominee. Mr. Adams, in that remarkable letter to Mr. Pickering, in which he desires his resignation, requests him to send it early, in order that he may nominate to the Senate, then about to sit, and he in fact removes Mr. Pickering by a nomination. Certainly no such unlimited power has ever been claimed by any of the earlier Presidents as has now been set up for the President by his most remarkable, aye, criminal answer. It will not have escaped attention that no determination was made by that legislative construction as to how the removal, if in the President's power, should be made, which is now the question in dispute. That has been determined by the universal practice of the government, with exceptions, if any, so rare as not to be worthy of consideration; so that we now claim the law to be what the practice has ever been. If, however, we concede the power of removal to be in the President as an implied power, yet we believe it cannot be successfully contended upon any authorities or constant practice of the government that the States under the clause in the constitution which "vests in Congress the power to make all laws which shall be necessary and proper for carrying into execution * * * all powers vested by this constitution in the government of the United States or in any department or officer thereof." The power of regulation of the tenure of office and the manner of removal has always been exercised by Congress unquestioned till now. On the 15th of May, 1820, (vol. 3 Statutes at Large, p. 582,) Congress provided for the term of office of certain officers therein named to be four years, but made them removable at pleasure. By the second section of the same act Congress removed from office all the officers therein commissioned in providing a date when each commission should expire, thus asserting a legislative power of removal from office, sometimes by passing acts which appear to concede the power to the President to remove at pleasure; sometimes restricting that power in their acts by the most stringent provisions; sometimes conferring the power of removal, and sometimes that of appointment—the acts establishing the territorial officers being the most conspicuous in this regard. Upon the whole, no claim of exclusive right over removals or appointments seems to have been made either by the Executive or by Congress. No bill was ever vetoed on this account until now. In 1818 Mr. Wirt, the Attorney General, giving the earliest official opinion on this question coming from that office, said that only where Congress had not undertaken to restrict the tenure of office by the act creating it would a commission issue to run during the pleasure of the President; but if the tenure was fixed by law, then commission must conform to the law. No constitutional scruples as to the power of Congress to limit the tenure of office seem to have disturbed the mind of that great lawyer. But this was before any attempt had been made by any President to arrogate to himself the official patronage for the purpose of party or personal aggrandizement, which gives the only value to this opinion as an authority. Since the Attorney General's office has become a political one, I shall not trouble the Senate with citing or examining the opinions of its occupants. In 1826 a committee of the Senate, consisting of Mr. Benton of Missouri, Chairman, Mr. Macon, of North Carolina, Mr. Van Buren, of New York, Mr. Dickerson, of New Jersey, Mr. Johnson, of Kentucky, Mr. White, of Tennessee, Mr. Holmes, of Maine, Mr. Hayne, of South Carolina, and Mr. Findlay, of Pennsylvania, was appointed to take into consideration the question of restraining the power of the President over removal from office, who made a report through their chairman, Mr. Benton, setting forth the extent of the evils arising from the power of appointment to and removal from office by the President, declaring that the constitution had been changed in this regard, and that "construction and legislation have accomplished this change,"—and submitted two amendments to the constitution, one providing a direct election of the President by the people, and another "that no Senator or Representative should be appointed to any place until the expiration of the Presidential terms in which such person shall have served as Senator or Representative"—as remedies for some of the evils complained of; but the committee say that "not being able to reform the constitution in the election of President, they must go to work upon his powers, and trim down these by statutory enactments whenever it can be done by law and with a just regard to the proper efficiency of government, and for this purpose reported six bills—one to regulate the publication of the laws and public advertisements; another to secure in office faithful collectors and disbursers of the revenues and to displace defaulters—the first section of which vacated the commissions of "all officers after a given date charged with the collection and disbursement of the public moneys, who had failed to account for such moneys on or before the 30th day of September preceding;" and the second section enacted that:—"At the same time a nomination is made to fill a vacancy occasioned by the exercise of the President's power to remove from office, the fact of the removal shall be stated to the Senate, with a report of the reasons for which such officers may have been removed; also a bill to regulate the appointment of postmasters, and a bill to prevent military and naval officers from being dismissed the service at the pleasure of the President, by inserting a clause in the commission of such officers that "it is to continue in force during good behavior," and "that no officer shall ever hereafter be dismissed the service except in pursuance of the sentence of a court martial or upon address to the President from the two houses of Congress." Is it not remarkable that exactly corelative measures to these have been passed by the Thirty-ninth Congress and are now the subject of controversy at this bar? It does not seem to have occurred to this able committee that Congress had not the power to curb the Executive in this regard, because they asserted the practice of dismissing from office "to be a dangerous violation of the constitution." In 1830 Mr. Holmes introduced and discussed in the Senate a series of resolutions which contained, among other things, "the right of the Senate to inquire, and the duty of the President to inform them, when and for what causes any officer has been removed in the recess." In 1835 Mr. Calhoun, Mr. Southard, Mr. Bibb, Mr. Webster, Mr. Benton and Mr. King of Georgia, of the Senate, were elected a committee to consider Executive patronage and the means of limiting. That committee, with but one dissenting voice (Mr. Benton's), reported a bill which provided in its third section "that in all nominations made by the President to the Senate to fill vacancies occasioned by removal from office, the fact of the removal shall be stated to the Senate at the same time that the nomination is made, with a statement of the reasons for such removal." It will be observed that this is the precise section reported by Mr. Benton in 1826 and passed to a second reading in the Senate. After much discussion the bill passed the Senate, 31 yeas, 15 nays—an almost two-thirds vote. Thus it would seem the ablest men of that day, of both political parties, subscribed to the power of Congress to limit and control the President in his removal from office. One of the most marked instances of the assertion of this power in Congress will be found in the act of February 25, 1863, providing for a national currency and the office of Comptroller. (Statutes at Large, vol. 12, p. 665.) This controls both the appointment and the removal of that officer, enacting that he shall be appointed, on the nomination of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, by and with the advice and consent of the Senate. This was substantially re-enacted June 3, 1864, with the addition that "he shall be removed upon reasons to be communicated to the Senate." Where were the vigilant then in both houses who now so denounce the power of Congress to regulate the appointment and removal of officers by the President as unconstitutional? It will be observed that the constitution makes no distinction between the officers of the army and navy and officers of the civil service, so far as their appointments and commissions, removals and dismissals are concerned. Their commissions have ever run "to hold office during the pleasure of the President;" yet Congress, by act of the 17th of July, 1862 (Statutes at Large, volume 12, page 596), enacted that the President of the United States be, and hereby is, authorized and requested to dismiss and discharge from the military service, either in the army, navy, marine corps or volunteer force, in the United States service, any officer for any cause which, in his judgment, either renders such officer unsuitable for, or whose dismission would promote the public service. Why was it necessary to authorize the President so to do if he had the constitutional power to dismiss a military officer at pleasure? And his powers, whatever they are, as is not doubted, are the same in civil office. The answer to this suggestion may be that this act was simply one of supererogation, only authorizing him to do what he was already empowered to do, and therefore not specially pertinent to this discussion. But on the 13th of July, 1866, Congress enacted "that no officer in the military or naval service shall, in time of peace, be dismissed from service except upon and in pursuance of the sentence of a court martial to that effect. What becomes, then, of the respondent's objection that Congress cannot regulate his power of removal from office? In the snow storm of his vetoes why did no flake light down on this provision? It concludes the whole question here at issue. It is approved and signed Andrew Johnson. It will not be claimed, however, if the Tenure of Office act is constitutional, (and that question I shall not argue, except as has been done incidentally, for reasons hereafter to be stated), that he could remove Mr. Stanton provided the office of Secretary of War comes within its provisions; and one claim made here before you by the answer is that the office is excepted by the terms of the law. Of course I shall not argue to the Senate, composed mostly of those who passed the bill, what their wishes and intentions were. Upon that point I cannot aid them; but the construction of the act furnishes a few suggestions. First, let us determine the exact status of Mr. Stanton at the moment of its passage. Answer admits Mr. Stanton was appointed and commissioned and duly qualified as Secretary of War under Mr. Lincoln, in pursuance of the act of 1789. In the absence of any other legislation or action of the President he legally held his office during the term of his natural life. This consideration is an answer to every suggestion as to the Secretary holding over from one Presidential term to another. On the 2d of March, 1867, the Tenure of Office act provided, in substance, that all civil officers duly qualified to act by appointment, with the advice and consent of the Senate, shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided, to wit:—"Provided, that the Secretaries shall hold their office during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate." By whom was Mr. Stanton appointed? By Mr. Lincoln. Whose Presidential term was he holding under when the bullet of Booth became a proximate cause of this trial? Was not his appointment in full force at that hour? Had any act of the respondent up to the 12th of August last vitiated or interfered with that appointment? Whose Presidential term is the respondent now serving out? His own, or Mr. Lincoln's? If his own, he is entitled to four years up to the anniversary of the murder, because each Presidential term is four years by the consitution, and the regular recurrence of those terms is fixed by the act of May 8, 1792. If he is serving out the remainder of Mr. Lincoln's term then his term of office expires on the 4th of March, 1869, if it does not before. Is not the statement of these propositions their sufficient argument? If Mr. Stanton's commission was vacated in any way by the Tenure of Office act then it must have ceased one month after the 4th of March, 1865—to wit, April 4, 1865. Or, if the Tenure of Office act had no retroactive effect, then his commission must have ceased, if it had the effect to vacate his commission at all, on the passage of the act—to wit, March 2, 1867; and, in that case, from that date to the present he must have been exercising his office in contravention of the second section of the act, because he was not commissioned in accordance with its provisions. And the President, by "employing" him, in so doing from the 2d of March to the 12th of August, became guilty of a high misdemeanor under the provision of the sixth section of said act; so that if the President shall succeed in convincing the Senate that Mr. Stanton has been acting as Secretary of War against the provisions of the Tenure of Office act, which he will do if he convince them that that act vacated in any way Mr. Stanton's commission, or that he himself was not serving out the remainder of Mr. Lincoln's Presidential term, then the House of Representatives have but to report another article for this misdemeanor, to remove the President upon his own confession. It has been said, however, that in the discussion at the time of the passage of this law observations were made by Senators tending to show that it did not apply to Mr. Stanton, because it was asserted that no member of the Cabinet of the President would wish to hold his place against the wishes of his chief, by whom he had been called into council; and these arguments have been made the groundwork of attack upon a meritorious officer, which may have so influenced the minds of Senators that it is my duty to observe upon them to meet arguments to the prejudice of my cause. Without stopping to deny the correctness of the general proposition, there seem to be at least two potent answers to it. The respondent did not call Mr. Stanton into his council. The blow of the assassin did call the respondent to preside over a Cabinet, of which Mr. Stanton was then an honored member, beloved by its chief; and if the respondent deserted the principles under which he was elected, betrayed his trust and sought to return rebels, whom the valor of our armies had subdued, again into power, are not those reasons, not only why Mr. Stanton should not desert his post, but, as a true patriot, maintain it all the more firmly against this unlooked for-treachery? Is it not known to you, Senators, and to the country that Mr. Stanton retains this unpleasant and distasteful position, not of his own will alone, but at the behest of a majority of those who represent the people of this country in both houses of the Legislature, and after the solemn decision of the Senate that any attempt to remove him without their concurrence is unconstitutional and unlawful? To desert it now, therefore, would be to imitate the treachery of his accidental chief. But whatever may be the construction of the "Tenure of Civil Office act" by others, or as regards others, Andrew Johnson, the respondent, is concluded upon it. He permitted Mr. Stanton to exercise the duties of his office in spite of it, if that office was affected by it. He suspended him under its provisions. He reported that suspension to the Senate, with his reasons therefor, in accordance with its provisions, and the Senate, acting under it, declined to concur with him, whereby Mr. Stanton was reinstated. In the well known language of the law, is not the respondent estopped by his solemn official acts from denying the legality and constitutional propriety of Mr. Stanton's position? Before proceeding further I desire most earnestly to bring the attention of the Senate to the averments of the President in his answer, by which he justifies his action in attempting to remove Mr. Stanton and the reasons which controlled him in so doing. He claims that on the 12th day of August last he had become fully of the opinion that he had the power to remove Mr. Stanton or any other executive officer, or suspend him from office and to appoint any other person to act instead "indefinitely and at his pleasure;" that he was fully advised and believed, as he still believes, that the Tenure of Civil Office act was unconstitutional, inoperative and void in all its provisions, and that he had then determined at all hazards, if Stanton could not be otherwise got rid of, to remove him from office in spite of the provisions of that act and the action of the Senate under it, if for no other purpose, in order to raise for a judicial decision the question affecting the lawful right of said Stanton to persist in refusing to quit said office. Thus it appears that with full intent to resist the power of the Senate, to hold the Tenure of Office act void and to exercise this illimitable power claimed by him, he did suspend Mr. Stanton, apparently in accordance with the provisions of the act; he did send the message to the Senate within the time prescribed by the act; he did give his reasons for the suspension to the Senate and argued them at length, accompanied by what he claimed to be the evidence of the official misconduct of Mr. Stanton, and thus invoke the action of the Senate to assist him in displacing a high officer of the government under the provisions of an act which he at that very moment believed to be unconstitutional, inoperative and void, thereby showing that he was willing to make use of a void act and the Senate of the United States as his tools to do that which he believed neither had any constitutional power to do. Did not every member of the Senate, when that message came in announcing the suspension of Mr. Stanton, understand and believe that the President was acting in this case as he had done in every other case under the provisions of this act? Did not both sides discuss the question under its provisions? Would any Senator upon this floor, on either side, so demean himself as to consider the question one moment if he had known it was then within the intent and purpose of the President of the United States to treat the deliberations and actions of the Senate as void and of no effect, if its decision did not comport with his views and purposes? And yet, while acknowledging the intent was in his mind to hold as naught the judgment of the Senate if it did not concur with his own, and remove Mr. Stanton at all hazards, and as I charge it upon him here, as a fact no man can doubt, with a full knowledge also that the Senate understood that he was acting under the provisions of the Tenure of Office act, still thus deceiving them, when called to answer for a violation of that act in his solemn answer he makes the shameless avowal that he did transmit to the Senate of the United States a "message wherein he made known the orders aforesaid, and the reasons which induced the same so far as the respondent then considered it material and necessary that the same should be set forth." True it is, there is not one word, one letter, one implication in that message that the President was not acting in good faith under the Tenure of Office act and desiring the Senate to do the same. So the President of the United States, with a determination to assert at all hazards the tremendous power of removal of every officer without the consent of the Senate, did not deem it "material or necessary" that the Senate should know that he had suspended Mr. Stanton indefinitely against the provisions of the Tenure of Office act, with full intent at all hazards to remove him, and that the solemn deliberations of the Senate, which the President of the United States was then calling upon them to make in a matter of the highest governmental concern, were only to be of use in case they suited his purposes; that it was not "material or necessary" for the Senate to know that its high decision was futile and useless; that the President was playing fast and loose with this branch of the government—a sort of "heads I win, tails you lose" game, which was never before exercised save by thimble-riggers and sharpers. If Andrew Johnson never committed any other offence—if we knew nothing of him save from this avowal—we should have a full picture of his mind and heart, painted in colors of living light, so that no man will ever mistake his mental and moral lineaments hereafter. Instead of open and frank dealing, as becomes the head of a great government in every relation of life, and especially needful from the highest executive officer of the government to the highest legislative branch thereof; instead of a manly, straightforward bearing, claiming openly and distinctly the rights which he believed pertained to his high office, and yielding to the other branches, fairly and justly, those which belong to them, we find him, upon his own written confession, keeping back his claims of power, concealing his motives, covering his purposes, attempting by indirection and subterfuge to do that as the ruler of a great nation which, if it be done at all, should have been done boldly, in the face of day. And upon this position he must stand before the Senate and the country if they believe his answer, which I do not that he had at that time these intents and purposes in his mind, and they are not the subterfuge and evasion and after thought which a criminal brought to bay makes to escape the consequences of his act. Senators, he asked you for time in which to make his answer. You gave him ten days, and this is the answer he makes. If he could do this in ten days what should we have had if you had given him forty? You show him a mercy in not extending the time for answer.

Passing from further consideration of the legality of the action of the respondent in removing Mr. Stanton from office in the manner and form and with the intent and purpose with which it has been done, let us now examine the appointment of Brevet Major General Lorenzo Thomas, of the United States army, as Secretary of War *ad interim*. I assume that it is not denied in any quarter that this *ad interim* appointment to this office is the mere creature of law, and if justified at all is to be so under some act of Congress. Indeed, the respondent in his answer says that in the appointment of General Grant *ad interim* he acted under the act of February 13, 1795, and subject to its limitations. By the act of August 7, 1789, creating the Department of War (1st Statutes at Large, page 49), "in case of any vacancy" no provision is made for any appointment of an acting *ad interim* Secretary. In that case the records and papers are to be turned over for safe keeping to the custody of the chief clerk. This apparent omission to provide for an executive emergency was attempted to be remedied by Congress by the act of May 8, 1792 (1st Statutes, 281), which provides "that in case of the death, absence from the seat of government or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed or until such absence or inability by sickness shall cease." It will be observed that this act provides for vacancies by death, absence or sickness only, whereby the head of a department or any officer in it cannot perform his duty, but makes no provision for vacancy by removal. Two difficulties were found in that provision of law:—First, that it provided only for enumerated vacancies; and also it authorized the President to make an acting officer of any person for any length of time. To meet these difficulties the act of the 13th of February, 1795, was passed (1st Stat. at Large, 415), which provides "in case of vacancy whereby the Secretaries or any officer in any of the departments cannot perform the duties of his office, the President may appoint any person to perform the duties for a period not exceeding six months." Thus the law stood as to acting appointments in all of the departments (except the Navy and Interior, which had no provision for any person to act in place of the Secretary) until the 19th of February, 1863, when, by the second section of an act approved at that date (12th Stat., 646), it was "provided that no person acting or assuming to act as a civil, military or naval officer shall have any money paid to him as salary in any office which is not authorized by some previously existing law." The state of the law upon this subject at that point of time is thus:—In case of death, absence or sickness, or of any vacancy whereby a Secretary or other officer of the State, War or Treasury Department could not perform the duties of the office any person could be authorized by the President to perform those duties for the space of six months. For the Departments of the Interior and the Navy provisions had been made for the appointment of an Assistant Secretary, but no provision in case of vacancy in his office, and a restriction put upon any officers acting when not authorized by law, from receiving any salary whatever. To meet these omissions and to meet the case of resignation of any officer of any executive department, and also to meet what was found to be a defect in allowing the President to appoint any person to those high offices for the space of six months, whether such person had any acquaintance with the duties of the department or not, an act was passed February 20, 1863, (12 stat., p. 656) which provides that in case of the death, resignation, absence from the seat of government or sickness of the head of an executive department or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize the head of any other executive department or other officer in either of said departments whose appointment is vested in the President, at his discretion, to perform the duties of the said respective offices until a successor be appointed or until such absence or inability shall cease. Therefore, in case of the death, resignation, sickness or absence of a head of an executive department, whereby the incumbent could not perform the duties of his office, the President might authorize the head of another executive department to perform the duties of the vacant office, and in case of like disability of any officer of an executive department other than the head the President might authorise an officer of the same department to perform his duties for the space of six months. It is remarkable that in all these statutes, from 1789 down, no provision is made for the case of a removal, or that anybody is empowered to act for the removed officer, the chief clerk being empowered to take charge of the books and papers only. Does not this series of acts conclusively demonstrate a legislative construction of the constitution that there could be no removal of the chief of an executive department by the act of the President, save by the nomination and appointment of his successor, if the Senate were in session, or a qualified appointment till the end of the next session if the vacancy happened or was made in recess? Let us now apply this state of the law to the appointment of Major General Thomas Secretary of War *ad interim* by executive order. Mr. Stanton had neither died nor resigned, was not sick nor absent. If he had been, under the act of March 3, 1863—which repeals all inconsistent acts—the President was authorized only to appoint the head of another executive department to fill his place *ad interim*. Such was not General Thomas. He was simply an officer of the army, the head of a bureau or department of the War Department, and not eligible under the law to be appointed. So that his appointment was an illegal and void act. There have been two cases of *ad interim* appointments which illustrate and confirm this position; the one was the appointment of Lieutenant General Scott Secretary of War *ad interim* and the other the appointment of General Grant *ad interim* upon the suspension of Mr. Stanton, in August last. The appointment of General Scott was legal, because that was done before the restraining act of March 2, 1863, which requires the detail of the head of another department to act *ad interim*. The appointment of General Grant to take the place of Mr. Stanton during his suspension would have been illegal under the acts I have cited, he being an officer of the army and not the head of a department, if it had not been authorized by the second section of the Tenure of Civil Office act, which provides that in case of suspension, and no other, the President may designate "some suitable person to perform temporarily the duties of such office until the next meeting of the Senate." Now, General Grant was such "suitable person," and was properly enough appointed under that provision. This answers one ground of the defence which is taken by the President—that he did not suspend Mr. Stanton under the Tenure of Office act, but by his general power of suspension and removal of an officer. If the President did not suspend Stanton under the Tenure of Office act, because he deemed it unconstitutional and void, then there was no law authorizing him to appoint General Grant, and that appointment was unauthorized by law and a violation of his oath of office. But the Tenure of Office bill by its express terms forbids any employment, authorization or appointment of any person in civil office, where the appointment is by and with the advice and consent of the Senate, while the Senate is in session. If this act is constitutional—*i. e.*, if it is not so far in conflict with the paramount law of the land as to be inoperative and void—then the removal of Mr. Stanton and the appointment of General Thomas are both in direct violation of it, and are declared by it to be high misdemeanors. The intent with which the President has done this is not doubtful, nor are we obliged to rely upon the principle of law that a man must be held to intend the legal consequences of all his acts. The President admits that he intended to set aside the Tenure of Office act, and thus contravene the constitution, if that law was unconstitutional. Having shown that the President wilfully violated an act of Congress without justification, both in the removal of Stanton and the appointment of Thomas, for the purpose of obtaining wrongfully the possession of the War Office by force, if need be, and certainly by threats and intimidations, for the purpose of controlling its appropriation through its *ad interim* chief, who shall say that Andrew Johnson is not guilty of the high crime and misdemeanors charged against him in the first eight articles? The respondent makes answer to this view that the President, believing this Civil Tenure bill to be unconstitutional, had a right to violate it, for the purpose of bringing the matter before the Supreme Court for its adjudication. We are obliged, *in limine*, to ask the attention of the Senate to this consideration, that they may take it with them as our case goes forward:—We claim that the question of the constitutionality of any law of Congress is upon this trial a totally irrelevant one, because all the power or right in the President to judge upon any supposed conflict with an act of Congress with the paramount law of the constitution is exhausted when he has examined a bill sent him and returned it with his objections. If then passed over his veto it becomes as valid as if in fact signed by him. The constitution has provided three methods, all equally potent, by which a bill brought into either